

**In The Court of Commissioner, Saran Division, Chapra**

**B.L.D.R. Appeal No. 33/2016**

**Sheo Nath Mahto**

**Vrs.**

**Ram Naresh Mahto**

**ORDER**

The instant appeal is directed against the impugned order passed by DCLR, Maharajganj in BLDR case No. 25/2015-16 on 11.12.2015.

The brief facts of the case are that the present respondent Ram Naresh Mahto S/o Late-Sagam Mahto, R/o vill-Salempur, P.S.& Circle-Bhagwanpur Hat, Dist-Siwan filed a case under the provision of BLDR-2009 before DCLR, Maharajganj in which the present appellant was made as o.p. The case of the petitioner was that the land in question measuring 3 katha 7 dhur of plot No. 745, khata No. 104, situated in Mouza Salempur which was settled to the Sagam Mahto by the Ex-Lord and accordingly after vesting of Zamindari return was also filed in favour of Sagam Mahto and thereafter, jamabandi No. 42 was created. Further case was that on 01.07.2015 the present appellant (o.p. before DCLR) forcibly put Palani and fixed tubewell and on opposition, they told that the said land is Gair Mazuruwa as such he prayed that o.p be restrained from making any obstruction over the said land. Thereafter, the learned DCLR after issuing notice to the o.p, heard the case and finally vide order dt. 11.12.15 found the claim of the petitioner as true and accordingly restrained the o.p. from making any obstruction. Feeling aggrieved by the said order, the, the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the parties

The learned counsel appearing on behalf of the appellant submitted that the impugned order is bad in law and fact and the same is fit to be set aside. He further argued that the learned lower Court ought to have considered that there is crucial dispute of right and title in this case which could not be decided by revenue authorities according to the provision of the BLDR Act-2009. He also argued that the claim of the respondent over the disputed land is not proved at all by any competent authority rather his claim is based on Sada patta, which is false and fabricated. The learned counsel further submitted in detail as to how the claim of settlement of the said disputed land by the ex-landlord in favour of Sagam Mahto is false and fabricated rather the said disputed land is coming in peaceful possession of Baliram Thakur since 1978 who got the same by an execution case vide order passed in Money suit No. 76/1976. He further submitted that alongwith disputed land, Baliram Thakur also got some land in auction sale. The learned counsel further submitted that no complex question of title can be decided under the BLDR Act, as such the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent while opposing the arguments made by the learned counsel for the appellant, submitted that the impugned order is valid and proper and the same is fit to be upheld. He further submitted that all the averments made by the appellant in his memo of appeal petition

has already been denied through rejoinder. He also submitted that the disputed land was settled by the ex-landlord in the name of the respondent's father and return was also filed then under this circumstances no one has got any right to execute any sale deed in the name of any person. The learned counsel also said that he has already filed photo copies of relevant papers which are sufficient to prove that the actual owner of the disputed land at present is the respondent. He lastly submitted that the claim of the appellant is based on baseless ground and having no merit in his appeal petition, the said appeal is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, arguments made by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case the dispute between the parties basically relates to their respective claim over the disputed land. The claim of the appellant is based on the ground that he got the disputed land from the rightful owner whereas the claim of the respondent is that the said land was settled to his ancestor by the ex-landlord and after vesting of Zamindari, return was also filed and thereafter, jamabandi was created. Obviously the dispute relates to raiyati land and non-of the parties come under the purview of allottee or settlee. In fact, the case before DCLR, itself was not maintainable in view of the complexity of the dispute relating to determination of title.

It is well settled that such a complex issue relating to the Hon'ble High Court also in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal and others vrs The State of Bihar and others) on 24.06.2014 has clearly observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule-1 of the BLDR Act-2009 and also held that complex question of title can never be decided in a summary proceedings.

For the aforesaid reasons and discussion made therein, it is clear that the impugned order is not sustainable, hence the same is set aside and this appeal is accordingly disposed of.

Dictated and Corrected by me.

  
Commissioner  
Saran Division, Chapra.

  
Commissioner  
Saran Division, Chapra.